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FILED & ENTERED

FEB 03 2023

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bolte DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

Jamie Lynn Gallian

Debtor(s).

Case No.: 8:21-bk-11710-SC

CHAPTER 7

Adv No: 8:21-ap-01096-SC

**ORDER DENYING MOTION FOR DEFAULT
JUDGMENT WITHOUT PREJUDICE AND
VACATING HEARING**

Janine Jasso

Plaintiff(s),

Hearing to be Vacated

Date: February 8, 2023

Time: 11:00 AM

Courtroom: 5C

v.

Jamie Lynn Gallian, et al.

Defendant(s).

The Court has reviewed Plaintiff's Motion for Default Judgment filed December 30, 2022 [Dk. 89] ("Motion"), and the docket as a whole, and has determined that the matter is appropriate for disposition without a hearing. Accordingly, having found good cause to do so for the reasons more fully stated below, the Court hereby DENIES the

1 Motion without prejudice and VACATES the February 8, 2023, hearing.

2 **I. Background**

3 Plaintiff filed a First Amended Complaint (“FAC”) on November 16, 2021 [Dk. 6],
4 asserting multiple causes of action: (1) Denial of Discharge of Debtor’s First Criminal
5 Restitution Judgment pursuant to 11 U.S.C. Section 523(a)(7); (2) Denial of Discharge
6 of Debtor’s Second Civil Judgment pursuant to 11 U.S.C. Section 523(a)(2)(A); (3)
7 Denial of Debtor’s Discharge pursuant to 11 U.S.C. Section 727(a)(3); (4) Denial of
8 Debtor’s Discharge pursuant to 11 U.S.C. Section 727(a)(4); and (5) Denial of Debtor’s
9 Discharge pursuant to 11 U.S.C. Section 727(a)(5). Plaintiff listed Debtor, Jamie
10 Gallian, as a defendant, along with her alleged corporations, J-Pad, LLC and J-
11 Sandcastle Co, LLC (together, “Corporate Defendants”).

12 Despite including the Corporate Defendants in the preamble of her FAC and the
13 caption page, Defendant asserted the foregoing causes of action against Defendant
14 Jamie Gallian only. Nowhere in the complaint does Plaintiff allege a specific cause of
15 action against Corporate Defendants. In fact, Plaintiff’s only references to the Corporate
16 Defendants are made in the context of asserting allegations in support of her alleged
17 causes of action against Defendant Jamie Gallian. Plaintiff’s Second Amended
18 Complaint, filed January 28, 2023 [Dk. 107], suffers the same defect.

19 **II. Motion for Default Judgment**

20 Defendant Jamie Gallian has filed a response¹ to Plaintiff’s First Amended
21 Complaint; the Corporate Defendants have not.² Plaintiff’s Motion seeks entry of a
22 default judgment against the Corporate Defendants only pursuant to the FAC, despite

23
24 ¹ Defendant Jamie Gallian filed an answer, in pro per, to the FAC on December 17, 2021 [Dk. 13] and
25 thereafter filed a Motion to Dismiss, which was granted in part and denied in part via order entered
26 January 10, 2023 [Dk. 102]. Having been granted leave to do so, Plaintiff filed a Second Amended
Complaint (“SAC”) on January 28, 2023 [Dk. 107]. The Second Amended Complaint also names the
Corporate Defendants and includes an additional request for relief pertaining to alter ego. As of the date
of the entry of this order, the deadline for Defendant Jamie Gallian to respond to the SAC has not expired.

27 ² The docket reflects that Jamie Gallian, in pro per, filed answers to the First Amended Complaint
28 purportedly on behalf of the Corporate Defendants on December 17, 2021 [Dks. 14-18]. However, such
answers were stricken by the Court by an order entered November 2, 2022 [Dk. 55], as a corporation may
not appear without counsel in any case or proceeding before this Court.

1 her subsequent filing of a Second Amended Complaint.

2 Default judgments are governed by Federal Rule of Civil Procedure (FRCP) 55,
3 made applicable to this proceeding by Federal Rule of Bankruptcy Procedure (FRBP)
4 7055. Fed. R. Civ. P. 55; Fed. Bankr. P. 7055. "The court has wide discretion in
5 determining whether to enter default judgment pursuant to Rule 55." *Cau-Min Li v.*
6 *Chavez (In re Chavez)*, 2006 Bankr. LEXIS 4879, at *8 (B.A.P. 9th Cir. 2006) (citing
7 *Villegas*, 132 B.R. 742, 746 (9th Cir. 1991) and 10 C. Wright, A. Miller & M. Kane,
8 Federal Practice and Procedure Civil 2d § 2685 (1983)).

9 In weighing whether to grant a motion for default judgment, courts consider a
10 number of different factors, including: (1) the possibility of prejudice to the plaintiff; (2)
11 the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum
12 of money at stake in the action; (5) the possibility of a dispute concerning material facts;
13 (6) whether the default was due to excusable neglect; and (7) the strong policy
14 underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Alden*
15 *v. Wolkowitz (In re Tina Chi Houn)*, 2012 Bankr. LEXIS 5666, at *4 (B.A.P. 9th Cir.
16 2012) (quoting *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986)).

17 Where, as here, a party moves for default judgment but fails to address any of
18 the *Eitel* factors noted above, default judgment may not be warranted at all. See *Wyles*
19 *v. Sussman*, 2020 U.S. Dist. LEXIS 165897, at *4 (C.D. Cal. 2020) (noting that default
20 judgment was inappropriate where "Plaintiff ha[d] failed to cite to or analyze the [*Eitel*]
21 factors that the Court must consider before entering a default judgment," and dismissing
22 the motion for default judgment without prejudice).

23 Notwithstanding Plaintiff's failure to address the *Eitel* factors in the Motion, the
24 Court has independently considered them and finds that the balance of these factors
25 weigh in favor of denying the Motion. For the reasons already explained above the
26 complaint is insufficient to warrant the entry of default judgment, as it does not allege
27 any cause of action or seek specific relief against the Corporate Defendants (i.e., an
28 alter ego finding). Further, the complaint was superseded by the filing of the Second

1 Amended Complaint.

2 Moreover, the allegations and issues presented in the complaint which relate to
3 the Corporate Defendants are too closely interwoven with the allegations and issues
4 pertaining to Defendant Jamie Gallian, who has filed a response and been an active
5 participant in the case. The Ninth Circuit has held that inconsistent judgments must be
6 avoided, and that where there are multiple defendants, a Court abuses its discretion by
7 entering default judgment against a defendant where such entry of default would lead to
8 an inconsistent judgment among the other defendants:

9 The leading case on the subject of default judgments in actions involving multiple
10 defendants is *Frow v. De La Vega*, 82 U.S. 552, 21 L. Ed. 60 (1872). The Court
11 held in *Frow* that, where a complaint alleges that defendants are jointly liable and
12 one of them defaults, judgment should not be entered against the defaulting
defendant until the matter has been adjudicated with regard to all defendants. *Id.*
13 at 554. It follows that if an action against the answering defendants is decided in
their favor, then the action should be dismissed against both answering and
defaulting defendants. *Id.*

14
15 *Neilson v. Chang (In re First T.D. & Inv. Inc.)*, 253 F.3d 520, 532 (9th Cir. 2001).

16 As the matter of Defendant Jamie Gallian's liability under the complaint is so
17 closely tied to the allegations pertaining to the Corporate Defendants, and Defendant
18 Jamie Gallian is not in default and continues to adjudicate the action, the Court may not
19 enter a default judgment against the Corporate Defendants at this time, especially
20 considering that the complaint was superseded by the Second Amended Complaint.³

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³ Should Plaintiff seek a default judgment against the Corporate Defendants under the Second Amended
Complaint, Plaintiff should be prepared to present legal authority demonstrating the authority of this Court
to grant such request.

1 **III. Conclusion**

2 For the reasons more fully stated above, the Court, in its discretion, hereby
3 DENIES the Motion without prejudice and VACATES the February 8, 2023, hearing.

4 IT IS SO ORDERED.

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25 Date: February 3, 2023
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Scott C. Clarkson
United States Bankruptcy Judge